THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.7579, 7695 AND 7996 OF 2007

DATED: 19-04-2007

W.P.No.7579 of 2007

BETWEEN

K. Royapa Reddy, S/o. Late Joji Reddy,
R/o.H.No.2/8, Vasanthnagar Colony,
Kukatpally, Hyderabad and others.

...PETITIONERS

AND

Sri M.Y. Moses, Election Officer,
The Durga Matha House Building Construction
Cooperative Housing Society Limited, 139 to 143,
1st Floor, Chenoy Trade Centre, Parklane,
Secunderabad and two others.

...RESPONDENTS

W.P.No.7695 OF 2007

BETWEEN

Durga Matha House Building Construction
Co-operative Housing Society Limited,
Situated at 5-9-85, Chappel Road, Abids,
Hyderabad, rep. by its President B. Janardhan,
S/o. Sri Chinnaiah.

...PETITIONER

AND

The Deputy Registrar Cooperative Society/
Divisional Cooperative Officer, Secunderabad,
Situated at Mouzam Jahi Marked, Hyderabad
and another.

…RESPONDENTS

W.P.No.7996 of 2007

BETWEEN

Mohan Raju, S/o. Sri M. Venkateswarulu,
R/o. Plot No.20, Parvathinagar, ECIL,
Hyderabad, Managing Committee Member of
Durga Matha House Building Construction
Co-operative Housing Society Limited, Situated
at 139, Chenoy Trade Centre, Parklane,
Secunderabad and two others.

…PETITIONERS

AND

The Deputy Registrar Cooperative Society/
Divisional Cooperative Officer, Secunderabad,
Situated at Mouzam Jahi Marked, Hyderabad
and two others.

…RESPONDENTS

COMMON ORDER:

W.P.Nos.7695 and 7996 of 2007 have been filed by the Durga Matha House Building Construction Co-operative Housing Society Limited (for short 'the Society'), represented by its President and its three Managing committee members respectively questioning the order of the first respondent dated 02.04.2007 in Rc.No.645/2005 Hsg in superseding the Managing Committee of the Society, TAB-276 with immediate effect from the date of the said order and appointing

Sri Jagan Mohan, Sub-Divisional Co-operative Officer, Secunderabad Mandal, as a Special Officer under Section 34(1) of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act') to manage the affairs of the society for a period of six months with effect from assumption of charge and in directing the Special Officer to take necessary action as per the Act and Rules made thereunder for immediate conduct of General Body Meeting

of the society and for conduct of elections at an early date.

2. W.P.No.7579 of 2007 has been filed by the members of the aforesaid society seeking a Writ of Mandamus to declare that the first respondent has no authority under law to conduct election to the Managing Committee of the Society and consequently declare that the election notice issued by the first respondent on 09.04.2007 as illegal and arbitrary and to set aside the same.

W.P.Nos.7695 and 7996 of 2007:

3. In these writ petitions it is contended that the elections to the Managing Committee of the Society was conducted in 2002 and Mr. B. Janardhan – President, Mr. S.C. Shyam Sunder, Vice- President; Mr. G. Pratap Reddy, Secretary – the fourth respondent and the petitioners in W.P.No.7996 of 2007 have been elected as members of the Managing Committee of the said Society. The term of the society is going to expire by 15.05.2007. It is stated that certain members of the society made a representation dated 12.02.2007 before the first respondent stating that the society has filed to conduct the General Body Meeting under Section 32(5) of the Act and pursuant to the said representation the first respondent issued summons dated 24.02.2007 under Section 55 of the Act to the President and other officer bearers of the society for submission of records as to whether any General Body Meeting has been conducted as per Section 32(5)(a) of the Act. It is stated that the petitioners in W.P.No.7996 of 2007 viz., Mohan Raju, D. Dasarath and G. Narender, by their representation dated 08.03.2007 requested one week time for submission of the records stating that the President became sick and bed ridden and unable to come out of bed. He is not in a position to search for the records as the society office was renovated and at that time, the records were shifted to the adjacent building and that only after his recovery necessary steps will be taken for production of available records. Therefore, no records could be submitted.

4. Pursuant to the said representation of the three members of the

Managing Committee of the Society dated 08.03.2007, the Secretary of the Society submitted the records of Receipt Books from 2005-06 onwards, Cash Books for the year 2005-06 onwards and the legal documents relating to various Court cases. As the relevant records with regard to the conduct of Managing Committee Meeting and General Body Meeting were not submitted as required under Section 32(5)(a) of the Act, a show cause notice dated 21.03.2007 was issued to the President and all other Managing Committee Members stating that the President has not conducted any Managing Committee Meeting during 2006-07 and also not conducted two General Meetings during 2006-07 as per the Act and Rules, therefore, the President has no authority as per law to conduct the General Body Meeting in the first half year of 2007 i.e. before 31.03.2007 and the President also has not conducted Managing Committee Meeting for conduct of elections to the Managing Committee of the Society. The said notice under Section 34(1) of the Act was issued calling upon them to explain within 7 days from the date of the notice as to why the Managing Committee of the Society should not be superseded. As no explanation was received till 02.04.2007, the first respondent passed the impugned order dated 02.04.2007 superseding the Managing Committee of the Society, questioning the same these two writ petitions have been filed stating that the show cause notice was served on the President of the Society only on 28.03.2007 and the said notice was not at all served on the other members of the Managing Committee. However, the President submitted his explanation dated 02.04.2007 on 03.04.2007 stating that the Managing Committee conducted the Managing Committee meetings and General Body meetings regularly as per the provisions of the Act and Rules.

5. A perusal of the record goes to show that the no date and no particulars of the conduct of Managing Committee meetings and General Body meetings have been furnished and the relevant records have also not been furnished. Admittedly, the said representation dated 02.04.2007 filed on 03.04.2007 has not at all been considered, as there was no occasion to consider the same as the impugned order has been passed on 02.04.2007

itself. Insofar as the other managing committee members are concerned, admittedly, the show cause notice has not at all been served on the ground that their residential addresses are not known to the first respondent. The said order passed by the first respondent is contrary to Section 34(1) of the Act, as notice is required to be served on all the Managing Committee members, therefore, the impugned order superseding the Managing Committee cannot be sustained.

6. This Court in **MAHABUBNAGAR TODDY TAPPERS CO-OPERATIVE SOCIETY V. SUPERINTENDENT OF PROHIBITION AND EXCISE**[1] while considering the requirement of service of notice under Section 34 of the Act on all the managing committee members observed as follows:

> "The action may be taken under Section 34 of the Act is, against the managing committee. Each member of the managing committee is effected by such proceedings. Therefore, they are entitled to be served with notices, individually. In a given case, some of the members of the committee may be in a position to defend their case, and convince the authority concerned, to drop the proceedings.
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> It is no uncommon that polarization exists, within a committee, and there may be vast difference of opinion. Therefore, it is mandatory that each member is put on notice, in any proposed under Section 34 of the Act. The authority cannot initiate of continue the proceedings, simply by serving show-cause notice on the Chairman or President of the Managing Committee.
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> It is not in dispute that the show-cause notice dated 30.12.2004, was served only upon the President of the society. Therefore, there is serious irregularity and lapse in the proceedings initiated by the 1st respondent. In view of the violation of principles of natural justice, alternative remedy of appeal does not bar the writ petition."

7. As the impugned order dated 02.04.2007 has been passed in violation of principles of natural justice, the same is set aside. However, the show cause notice dated 21.03.2007 holds good.

As the President has already submitted his explanation, the petitioners in W.P.No.7996 of 2007 are permitted to submit their explanation within seven (7) from today and the first respondent shall also serve the notice on the other two members of the Managing Committee of the Society, who are also

entitled to submit their explanation within seven (7) days from the date of receipt of the notice. On receipt of the explanations, it is open to the first respondent to pass appropriate orders within ten (10) days thereafter in accordance with law.

W.P.No.7579 OF 2007:

8. It is the case of the petitioners that the society has failed to conduct General Body Meeting and Managing Committee Meeting as per the Act and the Rules made thereunder during 2006-07 and
two General Body meetings as per the Rules were also not conducted from 2006-07. Hence, the Managing Committee is having no authority as per law to conduct General Body Meeting in the first half year of 2007 i.e. before 31.03.2007. In spite of issuance of notice calling upon the President and the Managing Committee members to submit the relevant records, they have failed to do so. Therefore, the Deputy Registrar/Divisional Cooperative Officer – fourth respondent issued a show cause notice on 21.03.2007 to show cause as to why the Managing Committee should not be superseded under Section 34(1) of the Act and as no proper explanation has been fled the Managing Committed has been superseded by proceedings dated 02.04.2007.

9. No doubt, this Court in the above writ petitions set aside the supersession order dated 02.04.2007 on the ground that notice has not been served on the Managing Committee members in W.P.No.7996 of 2007 and gave a liberty to the petitioners therein to file their explanation within one week and thereafter appropriate orders be passed under Section 34 of the Act. The question that arises for consideration is as to whether the first respondent herein is illegally appointed as election officer by the second respondent – society.

10. Perusal of the explanation dated 02.04.2007 submitted on 03.04.2007 pursuant to show cause notice dated 21.03.2007 goes to shows that the

Managing Committee meetings were conducted on 31.10.2005, 30.01.2006, 15.03.2006, 19.04.2006 and the last of such meeting was on 28.01.2007. It is stated that the Election Officer was appointed pursuant to Managing Committee resolution dated 10.03.2007 but nowhere it is mentioned by the President in the said explanation that such a meeting was held on 10.03.2007. A copy of the minutes of the said meeting dated 10.03.2007 is signed by the President alone and not by any other member of the Managing Committee, wherein it was resolved to appoint the first respondent as Election Officer. But a perusal of the copy of the minutes of the General Body Meeting said to have been held on 31.03.3007 goes to show that there was no discussion about the conduct of elections and appointment of election officer. Therefore, it is very much doubtful with regard to the appointment of the Election Officer to conduct elections.

11. In the aforesaid facts and circumstances of the case, I am of the opinion that the appointment of Election Officer itself is without any authority of law and not supported by any material, as such, the first respondent herein cannot conduct the elections.

12. At this stage, the learned counsel for the petitioners in all the writ petitions submit that as there appears to be some irregularity in appointing the Election Officer, the election notification itself may be set aside keeping it open to conduct elections depending upon the orders that may be passed by the Deputy Registrar/Divisional Cooperative Officer, under Section 34(1) of the Act.

13. As all the parties have consented to set aside the election notification, the writ petition is allowed as prayed for.

In the result, W.P.Nos.7695 and 7996 of 2007 are disposed of as indicated above and W.P.No.7579 of 2007 is allowed as prayed for.

The Deputy Registrar/Divisional Cooperative Officer shall pass orders uninfluenced by any of the observations made by this Court in these writ petitions. There shall be no order as to costs.

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V. ESWARAIAH, J

April 19, 2007
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[1] 2005 (2) ALD 34